

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1901.

No. 151

GEORGE SCHUERMAN, D. E. DUMAS, AND J. R. BEATSON,
APPELLANTS,

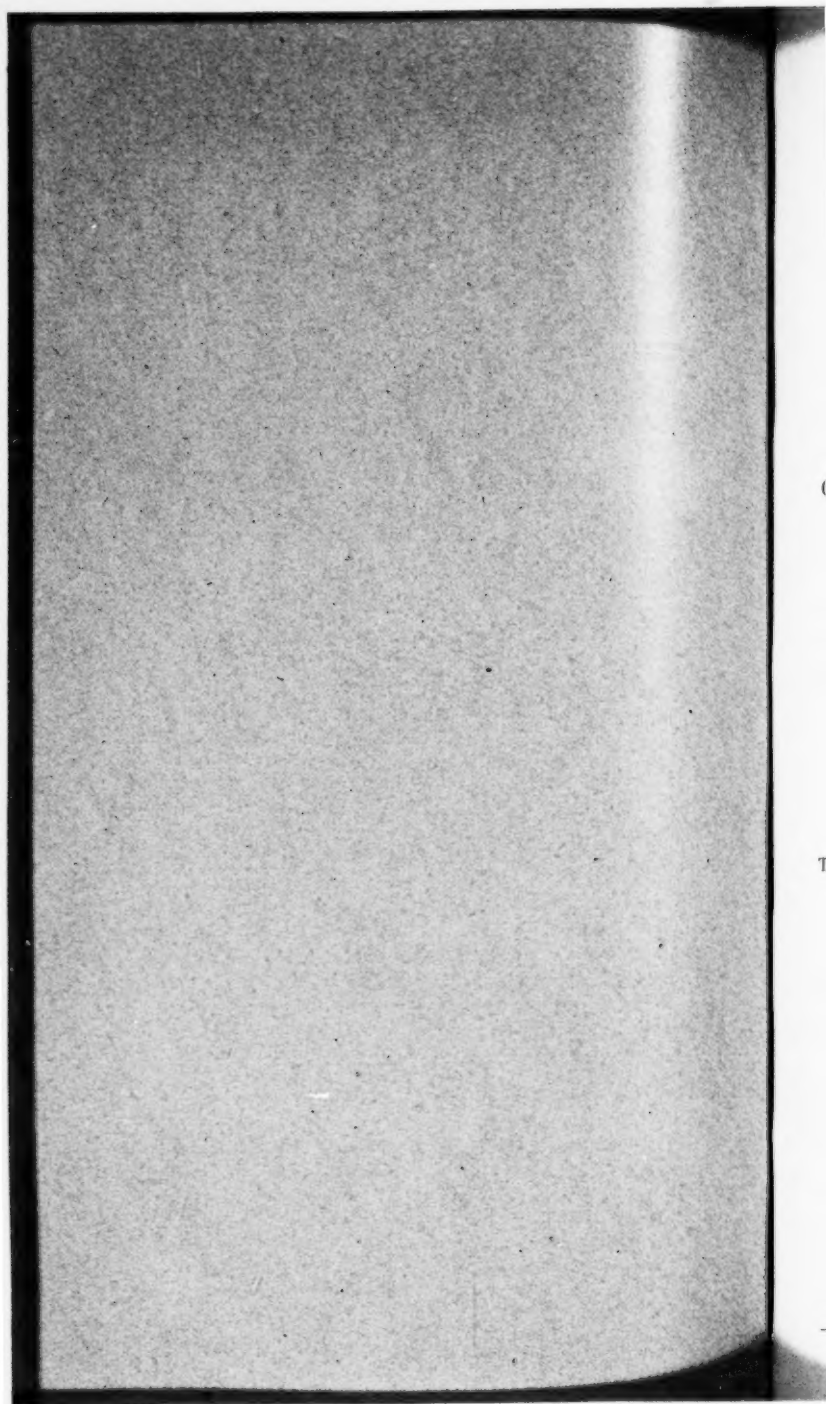
vs.

THE TERRITORY OF ARIZONA.

APPEAL FROM THE TERRITORY OF ARIZONA.

FILED SEPTEMBER 1, 1900.

(17,894.)



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vs.

THE TERRITORY OF ARIZONA.

APPEAL FROM THE TERRITORY OF ARIZONA.

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1 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

vs.

GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

The plaintiff in the above-entitled action, by Charles F. Ainsworth, its attorney general, complains of the above-named defendants, and alleges :

I.

That said defendants are now, and were during all the times hereinafter mentioned, the duly elected, qualified and acting supervisors of the county of Yavapai, in said Territory of Arizona, and as such constitute the board of supervisors for said county, and that their place of residence is in the county of Yavapai aforesaid.

II.

That heretofore, to wit, on and prior to the 17th day of September, 1897, the said county of Yavapai was indebted to various and divers persons on certain Yavapai County railroad subsidy bonds theretofore issued by said county of Yavapai prior to January 1st, 1890, which said bonds were in the hands of innocent purchasers for value, and were legal obligations against the
2 county of Yavapai, amounting on the said 17th day of September, 1897, principal and interest thereon, according to the terms of said bonds, to the sum of \$260,218.80.

III.

That on said 17th day of September, 1897, the loan commission of the Territory of Arizona, upon the request of the owners of said railroad subsidy bonds aforesaid, duly and legally funded said railroad subsidy bonds of said county of Yavapai, by exchanging therefor 258 territorial funding bonds of said Territory, each of the denomination of \$1,000, and each bearing interest at the rate of five per cent. per annum, interest payable semi-annually on the 15th days of January and July thereafter until paid, and in addition thereto, the said loan commission paid out in cash the sum of \$2,218.80, thereby funding 203 of said railroad subsidy bonds aforesaid, then outstanding against the county of Yavapai, each of said bonds so funded as aforesaid being of the denomination of \$1,000, and having attached thereto coupons for the accrued interest thereon.

IV.

That by reason of such funding of said bonds as aforesaid and the issuance of 258 territorial funding bonds of said Territory of Arizona, there became due and payable thereon, according to the tenor thereof, on January 15, 1898, the sum of \$4,288.33, and that there-

3 after, on the 15th day of January and July in each year subsequent thereto, there became due and payable to the holders of said bonds for interest thereon, according to the terms and conditions thereof, the sum of \$6,450, payable at the office of the territorial treasurer of the Territory of Arizona.

V.

That in compliance with the terms and conditions of said funding bonds so issued as aforesaid the said territorial treasurer of the Territory of Arizona has duly paid all of the interest due thereon at the times and when the same have become due and payable, according to the terms and conditions thereof, amounting in all at the present time to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds aforesaid to that extent and for that amount.

VI.

That upon the issuance of said territorial funding bonds aforesaid it became and was the duty of the board of supervisors of the county of Yavapai to levy annually upon the taxable property in said county sufficient tax to pay the annual interest on said bonds so issued by the Territory as aforesaid.

VII.

4 That for the year 1898 the territorial board of equalization of said Territory, at its regular annual session for that year, duly levied, as plaintiff is informed and verily believes to be true, the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the interest on the funding bonds heretofore mentioned maturing in the year 1898 and 1899, and the territorial auditor of said Territory duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai for the purpose of having said county board of supervisors levy said tax and include it in the tax-roll for that year; that thereupon these defendants, comprising the board of supervisors of said county of Yavapai, unlawfully and wrongfully refused and neglected to levy said tax of thirty-nine cents on each one hundred dollars valuation on the property in said county of Yavapai to pay said interest aforesaid, but only levied the sum of seven cents on the hundred dollars of valuation of said county, which was insufficient to pay the interest on the funded indebtedness of said county of Yavapai, and wholly inadequate and insufficient to pay the interest on any portion of the funding bonds heretofore described.

VIII.

That for the year 1899 the territorial board of equalization, at its annual session, duly levied thirty-seven cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai,

for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the funding
5 bonds aforesaid maturing in the year 1900, and the territorial auditor of said Territory of Arizona duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai; that thereupon the defendants, comprising the board of supervisors of said county of Yavapai, unlawfully and wrongfully refused and still refuse to levy said tax of thirty-seven cents on each one hundred dollars of valuation of the taxable property of said county of Yavapai, to pay said interest as aforesaid, and as plaintiff is informed and verily believes, said county board of supervisors will not levy the tax aforesaid to pay said interest, unless compelled to by the mandatory writ of this court; that said defendants give out and claim that they do not intend and will not levy the tax for the purpose of paying the interest on the funding bonds hereinbefore mentioned.

IX.

Plaintiff herein further alleges that it became and was the duty of said board of supervisors of Yavapai county to levy the tax of thirty-nine cents on each one hundred dollars for the year 1898, for the purpose of paying interest on said bonds so funded as aforesaid; and that it was the plain duty of the defendants, The Supervisors of the County of Yavapai, to levy said tax of thirty-seven cents on each one hundred dollars of valuation upon property in said county of Yavapai, to pay the interest on the funded indebtedness aforesaid
6 maturing in the year 1900; and that said board of supervisors should this year levy a tax of thirty-two cents on each one hundred dollars of valuation for the purpose of paying the interest on said funding bonds aforesaid maturing in the years 1898 and 1899, and should also levy the further tax of thirty-seven cents on each one hundred dollars of valuation to pay the interest on the funding bonds aforesaid maturing in the year 1900.

X.

Plaintiff alleges that it has no plain, speedy and adequate remedy in the ordinary course of law; that it is the party beneficially interested in the payment of this interest to the Territory of Arizona.

Wherefore, plaintiff prays that a writ of mandate issue out of this honorable court directed to the said defendants and each of them, directing and commanding them to forthwith convene as a board of supervisors, and to levy and assess upon the taxable property of the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation for the purpose of paying the interest on said funding bonds aforesaid maturing in the years 1898 and 1899; and also to levy and assess upon the taxable property in the county of Yavapai the further sum of thirty-seven cents on each one hundred dollars of valuation for the purpose of paying the interest on said funding bonds aforesaid maturing in the year 1900; and for costs

7 of this suit; and for such other and further relief as to the court may seem meet and just in the premises.

TERRITORY OF ARIZONA,
By CHARLES F. AINSWORTH,
Its Attorney General.

TERRITORY OF ARIZONA, {
County of Maricopa, } ss:

Charles F. Ainsworth, being first duly sworn on oath, says that he is the attorney general of the Territory of Arizona; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, that he believes it to be true.

CHARLES F. AINSWORTH.

Subscribed and sworn to before me this 1st day of September, A. D. 1899.

[NOTARY SEAL.]

THOS. D. BENNETT,
Notary Public.

My commission expires Sept 13, 1899.

Let an alternative writ of mandamus issue, returnable before the district court of the fourth judicial district of the Territory of Arizona, at the court-house in the city of Prescott, county of Yavapai, Territory of Arizona, on the thirteenth (13th) day of September, 1899, at the hour of 10 o'clock a. m.

RICHARD E. SLOAN, *Judge.*

(Endorsed :) 3079. District court fourth judicial district, county of Yavapai, Territory of Arizona. Territory of Arizona, plaintiff, vs. George Sherman, *et al.* defendants. Complaint. Original. Filed at 10:30 o'clock a. m. Sep. 2 1899, J. M. Watts, clerk.

8 OFFICE OF THE SHERIFF OF YAVAPAI COUNTY, {
Arizona, } ss:

I hereby certify that I received the within writ of mandate on the 2nd day of September, 1899, and personally served the same on the 5th day of September, 1899, on George Sherman, D. E. Dumas, and J. R. Beatson, defendants, being the defendants named in said writ of mandate, by delivering to said defendants personally in the county of Yavapai, Arizona, a true copy of said writ of mandate.

Dated Prescott, Arizona, September 5th, 1899.

J. L. MUNDS, *Sheriff.*

A. J. DAVIS, *Deputy.*

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

vs.

GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

Territory of Arizona to George Sherman, D. E. Dumas, and J. R. Beatson, supervisors of the county of Yavapai, Arizona, Greeting:

Whereas, it manifestly appears to the court by the affidavit of Charles F. Ainsworth, attorney general of the Territory of Arizona, on the part of said Territory of Arizona, the plaintiff, and the party beneficially interested herein, that the defendants George Sherman,

9 D. E. Dumas, and J. R. Beatson, are the supervisors of the county of Yavapai, and constitute such board of supervisors, and that heretofore, to wit, on the 17th day of September, 1897, said county of Yavapai, then being indebted to various and divers persons on certain railroad subsidy bonds theretofore issued by the said county of Yavapai, prior to January 1st, 1890, amounting on said 17th day of September, 1897, to the sum of \$260,218.80, and that the owners and holders of said bonds, on the 17th day of September, 1897, applied to the loan commission of the Territory of Arizona to have said bonds aforesaid of the county of Yavapai funded, and that on said 17th day of September, 1897, said loan commissioners of the Territory of Arizona duly funded 203 of the aforesaid outstanding bonds of said Yavapai county, each of the denomination of \$1,000, with the accrued interest thereon, amounting at that date to \$260,218.80, by then and there delivering to the owners and holders of the aforesaid bonds 258 territorial funding bonds of the Territory of Arizona of the denomination of \$1,000 each, and bearing interest at the rate of five per cent. per annum, payable semi-annually on the 15th days of January and July of each year thereafter until paid, and paid out in cash to said owners and holders of said bonds, in addition thereto, the sum of \$2,218.80; that by reason of the funding of said debt as aforesaid and the issuing of said funding bonds by the territorial loan commission, the said county of Yavapai became obligated to pay the interest due on said funding bonds aforesaid, according to the tenor thereof on the 15th days of January and

10 July in each year thereafter, and that said county of Yavapai became obligated to pay on the 15th day of January, 1898, the interest due on said funding bonds aforesaid the sum of \$4,288.33, and on July 15th and January 15th in each year thereafter the sum of \$6,450, which amounts it became the duty of the taxing officers of said county of Yavapai to levy and collect and pay over to the territorial treasurer of the Territory of Arizona; that for the year 1898 the territorial board of equalization, at its annual session thereof, duly levied thirty-nine cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on said funding bonds of said

county of Yavapai including interest on said 258 funding bonds aforesaid maturing in the years 1898 and 1899, and the territorial auditor of said Territory duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai; that said defendants, then and now constituting the board of supervisors of said county, wrongfully and unlawfully refused and neglected to levy said tax of thirty-nine cents on each one hundred dollars of valuation of property in said county of Yavapai to pay said interest on said 258 funding bonds aforesaid, but only levied the sum of seven cents on each one hundred dollars of valuation of said county, which amount so levied as aforesaid was insufficient to pay the interest on the funded indebtedness of said county of Yavapai, and wholly inadequate and insufficient

11 to pay the interest, or any portion thereof, on said 258 funding bonds aforesaid; that for the year 1899, the territorial board of equalization of the Territory of Arizona, at its annual session thereof, duly levied thirty-seven cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the interest on the 258 funding bonds aforesaid maturing in the year 1900, and the territorial auditor of said Territory duly certified the levy of said tax aforesaid to the county board of supervisors of said county of Yavapai; that thereupon these defendant, then and now comprising the board of supervisors of said county of Yavapai, wrongfully and unlawfully refused and neglected to levy said tax of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai, for the purpose of paying the interest on said funding bonds aforesaid; that all of the interest due on said 258 funding bonds aforesaid has been duly paid by the territorial treasurer of the Territory of Arizona as the same became due and payable, and that said territorial treasurer has up to the present time paid for interest due on said funding bonds aforesaid as the same became due and payable the sum of \$23,638.33, and that there is now due and owing to said Territory from the county

of Yavapai for interest due on said funding bonds aforesaid
12 said sum of \$23,638.33; that it is the plain duty of the board of supervisors of said county of Yavapai to levy and assess upon the taxable property of said county of Yavapai a tax sufficient to pay said interest due from said county to said Territory as aforesaid.

That it appears from said affidavit that the amount of thirty-two cents on each one hundred dollars of valuation of the taxable property in said county of Yavapai should be levied for the purpose of paying the interest due on said funding bonds aforesaid maturing in the years 1898 and 1899, and that there should be levied and assessed upon the taxable property of the county of Yavapai the sum of thirty-seven cents on each one hundred dollars of valuation, for the purpose of paying interest due on the funded indebtedness of said county of Yavapai, including the 258 bonds aforesaid, to pay said interest maturing in the year 1900; and that

said board of supervisors refused and still refuses to levy said tax upon the taxable property in the county of Yavapai.

That plaintiff has no plain, speedy and adequate remedy in the ordinary course of law.

Therefore, we do command you that immediately after the receipt of this writ you do forthwith convene as a board of supervisors and levy and assess upon all of the taxable property in the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation thereof, for the purpose of paying

13 the interest due on said 258 territorial funding bonds aforesaid maturing in the years 1898 and 1899, and that you duly certify said levy to the county treasurer of the county of Yavapai; and that you also levy and assess upon the taxable property in the county of Yavapai the further sum of thirty-seven cents on each one hundred dollars of valuation thereof, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the 258 funding bonds aforesaid maturing thereon in the year 1900, and that you duly certify such levy to the county treasurer of the county of Yavapai; or that you show cause before this court at the court-house thereof in the city of Prescott, county of Yavapai, Arizona, on the 13th day of September, 1899, at the hour of 10 o'clock a. m., why you have not done so.

Witness the Hon. R. E. Sloan, judge of said court at the court-house in the city of Prescott, county of Yavapai, Arizona, and the seal of said court, this 2d day of September, A. D. 1899.

J. M. WATTS,

Clerk of said Court.

[COURT SEAL.]

(Endorsed :) Office of the sheriff of Yavapai county, Arizona. Received Sept'r 2nd, 1899, at 2 o'clock p. m. J. L. Munds, sheriff, by A. A. Johns, under sheriff. 3079. In the district court, fourth judicial district, county of Yavapai, Territory of Arizona. Territory of Arizona, plaintiff, *vs.* George Sherman, *et al.*, defendants. Writ of mandate. Original. Filed Sept. 5th, 1899, at 10 o'clock a. m. J. M. Watts, clerk.

14 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

vs.

GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

Answer.

Come now the above-named defendants and for answer to the complaint herein filed, and for return to the alternative writ of mandate, demur to the said complaint for the reason that said complaint does not state facts sufficient to constitute a cause of action, nor does said complaint state facts sufficient to enable this court to grant the relief prayed for in said complaint or any other relief.

Wherefore defendants pray judgment as to the sufficiency of said complaint.

REESE M. LING,
District Attorney of Yavapai County,
Attorney for Defendants.

The said defendants further answering said complaint, demur specially thereto for the reason that it appears upon the face of said complaint that the bonds referred to in said complaint were funded after January 1st, 1897.

Wherefore defendants pray judgment as to the sufficiency
15 of said complaint.

REESE M. LING,
District Attorney of Yavapai County,
Attorney for Defendants.

1. And for further answer to said complaint and return to said alternative writ of mandate, these defendants admit that they are and during the year 1899 have been the duly elected, qualified and acting supervisors of the county of Yavapai, and that their place of residence is in said county of Yavapai.

2. These defendants admit that prior to the month of September 1897 certain instruments in writing purporting to be railroad subsidy bonds had been issued, but these defendants deny that said bonds were at any time in the hands of innocent purchasers for value, and expressly deny that said bonds were legal obligations against said county of Yavapai, but aver that said bonds and all thereof were absolutely null and void.

3. And further answering these defendants aver that they have no knowledge of the alleged funding of the bonds mentioned in said complaint and therefore deny the same, and deny each and all the allegations contained in paragraph III of said complaint.

4. These defendants further allege that no demand was ever made by the board of supervisors of Yavapai county upon the said board of loan commissioners of the Territory of Arizona for the funding of the bonds mentioned in said complaint, and that no notice was ever given said board of supervisors of the funding of said bonds.

16 5. Defendants further allege that said pretended funding was not the act of said board of loan commissioners; that at the time of said pretended funding only two members of said board of loan commissioners were present, and that the other member of said board was absent from the Territory of Arizona and took no part in the said pretended funding and was not consulted with reference thereto; that the said pretended funding was without authority of law, and that the said pretended funding was the free and voluntary assumption of the said bonds and the debt which the same represented and the payment thereof upon the part of the Territory of Arizona, and for which said county of Yavapai is in no way or manner responsible.

6. And further answering defendants allege that said pretended

funding took place after January 1st, 1897, and was and is contrary to law.

7. And further answering these defendants allege that said plaintiff has a plain, speedy and adequate remedy at law.

Wherefore defendants pray judgment that this proceeding be dismissed and that plaintiff have no relief herein, and for such other and further relief as the court may deem just and proper, with their costs.

REESE M. LING,
District Attorney of Yavapai County,
Attorney for Defendants.

TERRITORY OF ARIZONA, }
County of Yavapai, } 88 :

17 Reese M. Ling being duly sworn deposes and says; that he is the district attorney of Yavapai county, Arizona, and is the attorney for the defendants in the foregoing-entitled proceedings, that he has read the foregoing answer and return and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

REESE M. LING.

Subscribed and sworn to before me this 13th day of September, 1899.

J. H. ROBINSON,
Notary Public.

[NOTARY SEAL.]

My commission expires Jan. 5, 1901.

(Endorsed :) 3079. In the district court of Territory of Arizona in and for county of Yavapai. Territory of Arizona pl'ff vs. Geo. Sherman *et al.* def'ts. Answer. Filed at 10 o'clock a. m. Sept. 13th 1899. J. M. Watts, clerk. By Wm. Wilkerson deputy.

18 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,
vs.
GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding that the same may be submitted to the court for decision upon the following agreed statement of facts, together with the pleadings in this action, to wit:

1. The defendants are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai, in the Territory of Arizona.

2. Prior to the 17th day of September 1897 there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. Railroad bonds, upon which there was due according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80;

said bonds had been issued and were outstanding about the year 1890 and long prior to the 1st day of January 1897.

3. On the 18th day of November 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to and received by said board of loan commissioners prior to the 17th day of September, 1897.

4. On the 17th day of September 1897 the said board of loan commissioners (only two of its members being present as hereinafter stated) met at the city of Phoenix, and funded said bonds issued by said Yavapai county, by exchanging therefor 258 territorial funding bonds of said Territory, each of the denomination of \$1,000 and bearing interest at the rate of five per cent. per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took — part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th 1898 there became due and payable as interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid, the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona, has paid all the interest thereon at the times when the same became due and payable, amounting in all at the date hereof to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the territorial board of equalization of said Territory, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county including the funding bonds hereinafter mentioned and the territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine

cents and include the same in the tax-roll for that year, but only levied the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county. That said sum of seven cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. Railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county for the funding of said P. & A. C. Railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county, that the defendants, comprising the board of supervisors of said county, failed

and neglected to levy said tax of thirty-seven cents on the hundred dollars, but only levied the sum of six cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. Railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. Railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building and owning said railroad.

12. That prior to the institution of this suit demand was made by the territorial auditor, representing the Territory of Arizona, of the board of supervisors of Yavapai county to levy the tax assessment as set forth in the complaint and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That the said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898, was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county

23 was necessary to be levied in order to pay the interest due on said bonds for the year 1899.

C. F. AINSWORTH.

Attorney General,

By THOS. D. BENNETT,

Assistant Att'y General.

REESE M. LING,

District Attorney, Yavapai County, Ariz., Attorney for Def'ts.

(Endorsed:) No. 3079. The Territory vs. George Sherman *et al*,
agreed statement of facts. Filed at 10 o'clock a. m. Sept. 14th, 1899.
J. M. Watts, clerk. By Wm. Wilkerson deputy.

In the District Court of the Fourth Judicial District of the Territory
of Arizona in and for the County of Yavapai.

TERRITORY OF ARIZONA, Plaintiff,

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GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEAT-
son, Defendants.

} Judgment.

This cause came on regularly for trial before the court, jury having — waived by both parties hereto, plaintiff appearing by Thomas D. Bennett, assistant attorney general, and defendants appearing by Reese M. Ling, district attorney of Yavapai county, and both parties hereto having submitted the case on an agreed statement of facts together with the pleadings in this action, and the court
24 having considered the same and being fully advised in and concerning the premises doth find.

That the statement of facts filed in this case is substantially true and correct and is hereby adopted as the findings of fact in this case, and further the court finds that all the material allegations of the complaint are true.

As conclusions of law, the court finds that those certain two hundred fifty-eight railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott and Arizona Central railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai, Territory of Arizona.

That the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof, was in all respects authorized and legal.

That said bonds as funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the said county of Yavapai is liable for the same and for all the interest accruing on said bonds to be paid by taxation of all taxable property in said county of Yavapai to be levied and assessed by the board of supervisors acting as a board of equalization for said county, to be collected in the same manner as other taxes

are collected, and by the treasurer of said county of Yavapai to be paid over to the territorial treasurer.

25 That the sum of 32 cents on each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accruing interest on the aforesaid bonds for the year 1898, and the sum of 31 cents for each one hundred dollars of valuation of the county of Yavapai being necessary to meet the accrued interest in the bonds aforesaid by taxation for the year 1899, the court finds that the defendants herein are legally bound to levy and assess the said sum on all the taxable property in Yavapai county.

Wherefore, by reason of the law and the facts, it is considered, ordered and adjudged that it is the plain duty of the defendants herein comprising the board of supervisors of Yavapai county, Arizona Territory, to levy and assess upon the taxable property of said county in addition to all other levies and assessments made for taxes of said county, the sum of 32 cents on each one hundred dollars of valuation of taxable property in said county of Yavapai for the purpose of paying the interest due on the funding bonds aforesaid maturing in the years 1898 and 1899, and to levy and assess upon the taxable property of the county of Yavapai the sum of 37 cents on each one hundred dollars of valuation for the purpose of paying the interest due on the funded indebtedness of said county of Yavapai, including the two hundred fifty-eight bonds aforesaid maturing in the year 1900.

26 It is further adjudged that the defendants have failed to show sufficient cause to this court why said levy and assessment should not be made and the alternative writ of mandate issued on the second day of September, 1899, is hereby made final. The defendants are hereby commanded to forthwith convene as a board of supervisors and to levy and assess upon all the taxable property in the county of Yavapai the sum of 32 cents on each one hundred — valuation of the property in said county for the purpose of paying the interest due on said two hundred fifty-eight funding bonds maturing in the years 1898 and 1899, and to certify said levy to the county treasurer of Yavapai county.

Defendants are further commanded to forthwith levy and assess upon the taxable property of the county of Yavapai the further sum of 37 cents including the sum of six cents already levied on each one hundred dollars of valuation therein for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the two hundred fifty-eight funding bonds aforesaid maturing in the year 1900, and to certify such levy to the county treasurer of the county of Yavapai.

It is further adjudged that the plaintiff do have and recover of defendant its costs and disbursements herein taxed and allowed at the sum of twenty-seven dollars.

Done in open court this 14th day of September, 1899.

By the court:

RICHARD E. SLOAN, *Judge.*

27 (Endorsed :) 3079. District court, Yavapai county, Territory of Arizona. Territory of Ariz. vs. Geo. Schuerman *et al.* Board of supervisors. Judgment. Filed at 10 o'clock a. m. Sep. 15, 1899, J. M. Watts clerk.

In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,	}
<i>vs.</i>	
GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants.	

Motion for New Trial.

Come now the above-named defendants and move the court to set aside the decision and judgment of said court entered herein on the 14th day of September, 1899, and for a new trial of the above-entitled cause, upon the following grounds:

1. That the said judgment and decision are contrary to law.
2. That the court erred in ordering judgment for the plaintiff upon the agreed statement of facts.
3. That the court erred in not entering judgment for the defendants upon the agreed statement of facts.

REESE M. LING,
Attorney for Defendants.

(Endorsed :) District court, Yavapai county Territory of Arizona. Territory vs. Geo. Schuerman *et al.* Board of supervisors. Motion for new trial. Filed at 10 o'clock a. m. Sep. 14, 1899. J. M. Watts, clerk.

28 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,	}
<i>vs.</i>	
GEORGE SHERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants.	

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding that the same may be submitted to the court for decision upon the following agreed statement of facts, together with the pleadings in this action, to wit:

1. The defendants are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai, in the Territory of Arizona.
2. Prior to the 17th day of September, 1897, there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. Railroad bonds, upon which there was due according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80; said bonds had been issued and were outstanding about the year 1890 and long prior to the 1st day of January 1897.

29 3. On the 18th day of November 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to and received by said board of loan commissioners prior to the 17th day of September 1897.

4. On the 17th day of September 1897 the said board of loan commissioners (only two of its members being present as hereinafter stated) met at the city of Phoenix, and funded said bonds issued by said Yavapai county, by exchanging therefor 258 territorial funding bonds of said Territory, each of the denomination of \$1,000 and bearing interest at the rate of five per cent. per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th, 1898, there became due and payable as
30 interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona, has paid all the interest thereon at the times when the same became due and payable, amounting in — at the date hereof to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the territorial board of equalization of said Territory, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county, including the funding bonds hereinbefore mentioned, and the territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine cents and include the same in the tax-roll for that year, but only levied
31 the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county. That said sum of seven

cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. Railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county for the funding of said P. & A. C. Railroad bonds, and no notice was ever given to said board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid, maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county; that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars, but only levied the sum of six cents on the hundred

32 dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. Railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. Railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as subsidy to the corporation building and owning said railroad.

12. That prior to the institution of this suit demand was made by the territorial auditor, representing the Territory of Arizona, of the board of supervisors of Yavapai county to levy the tax assessment as set forth in the complaint, and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898 was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county was necessary to

33 be levied in order to pay the interest due on said bonds for the year 1899.

C. F. AINSWORTH,

Attorney General,

By THOS. D. BENNETT,

Assistant Atty General.

REESE M. LING,

District Attorney, Yavapai County, Ariz., Attorney for Def'ts.

(Endorsed :) No. 3079. In the district court 4th judicial district county of Yavapai, Territory of Arizona. Territory of Arizona plaintiff, *vs.* George Schuerman *et al.*, defendants. Statement of facts. Filed at 3 o'clock p. m. Oct. 13, 1899. J. M. Watts, clerk.

- 34 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

vs.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Defendants. }

Come now the above-named defendants and apply to the above-named court for an order fixing the amount of the bond to be given by said defendants upon the appeal taken by them from the judgment of this court entered on the 14th day of September, 1899, in order to stay all proceedings upon said judgment until the determination of said appeal, and also for an order staying proceedings on said judgment for a reasonable time to enable defendants to give such bond.

REESE M. LING,
Attorney for Defendants.

(Endorsed :) No. 3079. Territory *vs.* Geo. H. Scheurman, *et als.* Motion for supersedeas. Filed at 10 a. m. Sept. 16th, 1899. J. M. Watts clerk. By Wm. Wilkerson, dep'y.

- 35 In the District Court of the Fourth Judicial District of the Territory of Arizona in and for the County of Yavapai.

THE TERRITORY OF ARIZONA, Plaintiff,

vs.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Defendants. } Bond on Appeal.

Whereas George Schuerman, D. E. Dumas, and J. R. Beatson, the defendants in the above-entitled action, have appealed to the supreme court of the Territory of Arizona, from a judgment made and entered against them in the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, on the 14th day of September 1899, by the terms of which judgment said defendants are commanded and required to forthwith convene as a board of supervisors of said Yavapai county, and to levy and assess upon all the taxable property in said county of Yavapai the sum of 32 cents on each one hundred dollars' valuation of the property in said county for the purpose of paying the interest due on two hundred and fifty-eight funding bonds, mentioned in said judgment, maturing in the years 1898 and 1899, and to certify said levy to the county treasurer of Yavapai county, and in and by which judgment said defendants are further commanded to levy and assess upon the taxable property of the county of Yavapai the further sum

of 37 cents, including the sum of six cents already levied, on each one hundred dollars of valuation therein, for the purpose of paying the interest on the funded indebtedness of said county of Yavapai, including the two hundred and fifty-eight funding bonds aforesaid, maturing in the year 1900, and to certify such levy to the county treasurer of the county of Yavapai, and for the sum of twenty-seven dollars, costs of said action:

Now therefore, in consideration of the premises, and of such appeal, we George Schuerman, D. E. Dumas and J. R. Beatson, as principals, and Samuel Hill, N. Levy, M. J. Hickey, Joseph Dougherty, A. J. Head, J. W. Wilson, William Munds, J. I. Gardner, W. T. Brown, H. H. Cartter, F. G. Brecht, R. N. Fredericks, Ed. W. Wells, T. W. Otis, Morris Goldwater, E. Block, Chas. A. Dake, Henry Brinkmeyer, Jake Marks, R. H. Burmister, Harry Brisley and J. N. McCandless, all of the county of Yavapai and Territory of Arizona, as sureties, do hereby jointly and severally undertake and promise, on the part of the appellants, that the said appellants will prosecute their appeal with effect, and will pay all costs which have accrued in the said district court or which may accrue in the appellate court, not exceeding the sum of two hundred dollars, to which amount we acknowledge ourselves jointly and severally bound.

And whereas, the said appellants are desirous of staying the execution of the said judgment so appealed from, we, the said George Schuerman, D. E. Dumas and J. R. Beatson, as principals, and Samuel Hill, N. Levy, M. J. Hickey, Joseph Dougherty, A. J. Head, J. W. Wilson, William Munds, J. I. Gardner, W. T. Brown, H. H. Cartter, F. G. Brecht, R. N. Fredericks, Ed. W. Wells, T. W. Otis, Morris Goldwater, E. Block, Chas. A. Dake, Henry Brinkmeyer, Jake Marks, R. H. Burmister, Harry Brisley and J. N. McCandless, as sureties, all of the county of Yavapai and Territory of Arizona, do further, in consideration thereof and of the premises, jointly and severally undertake and promise, and do acknowledge ourselves further jointly and severally bound in the further sum of seven thousand five hundred dollars (being the amount for that purpose fixed by said district court), that the said appellants will pay to the Territory of Arizona all damages which the said Territory of Arizona may sustain by the not levying the taxes directed by said judgment and hereinbefore mentioned and certifying the same to the county treasurer of said Yavapai county, and the not doing the acts and things directed to be done by the said judgment from which said appeal is taken, each of said sureties being bound in the sum set opposite his name below and separate in no larger sum than, to wit:

Samuel Hill.....	\$1,000.00
N. Levy.....	500.00
M. J. Hickey.....	1,000.00
Joseph Dougherty.....	1,000.00
A. J. Head.....	1,000.00
J. W. Wilson.....	1,000.00
William Munds.....	1,000.00

38	J. I. Gardner.....	1,000.00
	W. T. Brown.....	1,000.00
	H. H. Cartter.....	1,000.00
	F. G. Brecht.....	1,000.00
	R. N. Fredericks.....	1,000.00
	Ed. W. Wells.....	1,000.00
	T. W. Otis.....	1,000.00
	Morris Goldwater.....	1,000.00
	E. Block.....	1,000.00
	Chas. A. Dake.....	1,000.00
	Henry Brinkmeyer.....	1,000.00
	Jake Marks.....	1,000.00
	R. H. Burmister.....	1,000.00
	Harry Brisley.....	1,000.00
	J. N. McCandless.....	500.00

In witness whereof we have hereunto set our hands this 25 day of September, 1899.

G. H. SCHUERMAN.
D. E. DUMAS.
J. R. BEATSON.
SAM'L HILL.
N. LEVY.
M. J. HICKEY.
JOSEPH DOUGHERTY.
A. J. HEAD.
J. W. WILSON.
WM. MUNDS.
J. I. GARDNER.
W. T. BROWN.
H. H. CARTTER.
F. G. BRECHT.
R. N. FREDERICKS.
ED. W. WELLS.
T. W. OTIS.
MORRIS GOLDWATER.
E. BLOCK.
CHAS. A. DAKE.
HENRY BRINKMEYER.
JAKE MARKS.
R. H. BURMISTER.
HARRY BRISLEY.
J. N. McCANDLESS.

TERRITORY OF ARIZONA, } ss:
County of Yavapai, }

Samuel Hill, N. Levy, M. J. Hickey, Joseph Dougherty, A. J. Head, J. W. Wilson, William Munds, J. I. Gardner, W. T. Brown, H. H. Cartter, F. G. Brecht, R. N. Fredericks, Ed. W. Wells, T. W. Otis, Morris Goldwater, E. Block, Chas. A. Dake, Henry Brinkmeyer, Jake Marks, R. H. Burmister, Harry Brisley, and J. N. McCandless,

being duly sworn, doth each for himself, depose and say; that he is one of the sureties named in and who signed the foregoing instrument; that he is a resident of the county of Yavapai and Territory of Arizona, and is worth the amount for which he has signed the foregoing undertaking, and set opposite his name below, over and above his just debts and liabilities exclusive of property exempt from execution.

Samuel Hill.....	\$1,000.00
N. Levy.....	500.00
Joseph Dougherty.....	1,000.00
A. J. Head.....	1,000.00
J. W. Wilson.....	1,000.00
J. I. Gardner.....	1,000.00
W. T. Brown.....	1,000.00
H. H. Cartter.....	1,000.00
F. G. Brecht.....	1,000.00
R. N. Fredericks.....	1,000.00
Ed. W. Wells.....	1,000.00
T. W. Otis.....	1,000.00
Morris Goldwater	1,000.00
E. Block.....	1,000.00
Chas. A. Dake.....	1,000.00
Henry Brinkmeyer.....	1,000.00
Jake Marks.....	1,000.00
R. H. Burmister.....	1,000.00
Harry Brisley.....	1,000.00
William Munds.....	1,000.00
41 J. N. McCandless.....	500.00
M. J. Hickey.....	1,000.00

(Signed)

HARRY BRISLEY.
F. G. BRECHT.
R. H. BURMISTER.
JOSEPH DOUGHERTY.
SAM'L HILL.
WM. MUNDS.
ED. W. WELLS.
M. J. HICKEY.

A. J. HEAD.
J. W. WILSON.
N. LEVY.
J. I. GARDNER.
W. T. BROWN.
H. H. CARTTER.
HENRY BRINKMEYER.
R. N. FREDERICKS.
T. W. OTIS.
E. BLOCK.
CHAS. A. DAKE.
MORRIS GOLDWATER.

Subscribed and sworn to before me this 25th day of September 1899.

J. H. ROBINSON,
Notary Public.

My commission expires Jan. 5, 1901.

[NOTARIAL SEAL.]

(Endorsed :) The within undertaking being in the amount directed by the court, is hereby approved this 25th day of September, 1899. Richard E. Sloan, judge district court. Approved as cost bond and filed September 25th, 1899. J. M. Watts, clerk.

42 TERRITORY OF ARIZONA, } ss :
County of Yavapai, }

I, J. M. Watts, clerk of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, do hereby certify that the annexed and foregoing is a true and correct copy of the supersedeas bond and undertaking on appeal in the action therein entitled, as appears from the original on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Prescott, in said county and Territory, this 28th day of October 1899.

J. M. WATTS,

Clerk of said Court.

[COURT SEAL.]

43 June Term, A. D. 1899. Sept. 14th, 1899, 65 Day.

TERRITORY OF ARIZONA

vs.

GEO. H. SCHUERMAN, D. E. DUMAS, and J. R. BEATSON,
Supervisors of Yavapai County, Arizona Territory.

No. 3079.

Application for Peremptory Writ of Mandamus.

Comes now this matter on for hearing, first; upon the demurrer of defendants on file herein:

The respective parties being present by their counsel, Thos. D. Bennett, ass't attorney general, for plaintiff, and Reese M. Ling, dist. attorney, counsel for defendants.

Defendants' demurrer to the plaintiff's complaint was submitted and overruled, to which ruling of the court defendants by their counsel then and there in open court duly excepted.

Comes now the matter on for hearing upon the complaint and answer on file herein, and respective parties by their counsel come and submit agreed statement of facts on file herein and submit case for decision thereon:

The court finds from the facts that plaintiff is entitled to judgment as prayed for;

Now, upon motion of plaintiff's counsel, it is ordered that judgment be entered for plaintiff and against defendants herein as prayed for; to which ruling of the court rendering judgment for plaintiff, defendants, by their counsel, in open court duly excepted;

44 Defendants' motion for a new trial filed herein is by the court overruled, to which ruling of the court defendants duly excepted.

Come now the defendants by their counsel in open court and give

notice of appeal to the supreme court of the Territory of Arizona from the order of the court for the entry of judgment for plaintiff, from the judgment rendered and entered herein and the order of the court overruling defendants' motion for new trial and from the whole thereof.

June Term, A. D. 1899. Sept. 16th, — Day.

The District Court, Fourth Judicial District of Arizona in and for Yavapai County.

Met at 10 o'clock a. m.

Present: His honor, Richard E. Sloan, judge. Dist. attorney, sheriff, bailiff and clerk.

TERRITORY OF ARIZONA

GEO. H. SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, }
vs. } No. 3079.
 Supervisors.

Come now the defendants, by their attorney R. M. Ling Esq., and move the court for an order fixing the amount of the bond on appeal herein and also for an order staying proceedings for a reasonable time to enable the defendants to give such bond:

Motion sustained and bond fixed at \$7,500.00 and proceedings stayed.

45 TERRITORY OF ARIZONA, }
 County of Yavapai, } ss:

I, J. M. Watts, clerk of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, do hereby certify that the foregoing is a full, true and complete transcript of the record and minutes of said court and all proceedings had in the case of The Territory of Arizona, plaintiff, against George H. Schuerman, D. E. Dumas, and J. R. Beatson, defendants, and that the hereto-attached papers are the complete — filed in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Prescott, in said county and Territory, this 28th day of October, 1899.

[COURT SEAL.]

J. M. WATTS,
 Clerk of said Court.

46 In the Supreme Court of the Territory of Arizona, October Term, 1899.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants, <i>vs.</i> TERRITORY OF ARIZONA, Appellee.	}	No. 709. Minute Entries, Entered October 30th, 1899.
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On motion of Mr. R. M. Ling, attorney for the appellants, it is ordered that the appellants be granted 30 days in which to file their brief, and

On motion of the attorney general, it is ordered that the appellee have 20 days after the filing of appellants' brief, in which to file its brief.

Assignment of Errors.

(As contained in appellants' brief.)

1st. The court erred in overruling the general demurrer of the defendants to the complaint of the plaintiff.

2nd. The court erred in overruling the special demurrer of the defendants to the plaintiff's complaint.

3rd. The court erred in finding as a conclusion of law that these certain two hundred fifty-eight railroad subsidy bonds issued by the county of Yavapai in aid of the construction of the railroad known as the Prescott & Arizona Central railroad, extending from
47 Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid, subsisting obligations of the county of Yavapai. (See page 24.)

4th. The court erred in finding as a conclusion of law that the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof was in all respects authorized and valid. (See page 24.)

5th. The court erred in finding as a conclusion of law that said bonds so funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the county of Yavapai is liable for the same and for all the interest accruing on said bonds. (Page 24.)

6th. The court erred in finding as a conclusion of law that the defendants herein are legally bound to levy and assess the sums of 32 cents on each one hundred dollars and 37 cents on each one hundred dollars of valuation of all the taxable property in said Yavapai county. (Page 25.)

7th. The court erred in holding and deciding that the bonds mentioned in the complaint in this action, known as the P. & A. C. Railroad bonds, were legally funded after January 1, 1897, under the provisions of the act of Congress approved June 6, 1896.

8th. The court erred in holding and deciding that no demand for the funding of said bonds by the board of supervisors of Yavapai
48 county was necessary in order that the same might be legally funded, under the provisions of said act of Congress, approved June 6, 1896.

9th. The court erred in holding and deciding that said P. & A. C. Railroad bonds, mentioned in the complaint herein, were legally funded at the meeting of the board of loan commissioners of the Territory of Arizona, on September 17, 1897, at which only two members of said board were present, the third member of said board not being present or acting, and not being in any manner consulted with reference to said funding.

10th. The court erred in rendering judgment in favor of the plaintiff upon the agreed statement of facts, adopted as the findings of fact.

11th. The court erred in not rendering judgment in favor of the defendants upon the agreed statement of facts, adopted as the findings of fact.

12th. The court erred in overruling defendants' motion for a new trial.

49 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants, <i>vs.</i> TERRITORY OF ARIZONA, Appellee.	}	No. 709. Minute Entry, Jan'y 9th, 1900.
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On motion of Mr. Reese M. Ling it is ordered that the hearing of this cause be set for January 26th.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants, <i>vs.</i> TERRITORY OF ARIZONA, Appellee.	}	No. 709. Minute Entry, Jan. 26th, 1900.
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This cause coming on regularly for hearing, was argued by Mr. Reese M. Ling for appellants, and Attorney General C. F. Ainsworth, for appellee, and ordered submitted.

50 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants, <i>vs.</i> TERRITORY OF ARIZONA, Appellee.	}	No. 709. Judgment, Rendered March 28th, 1900.
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This cause having been heretofore submitted and by the court taken under consideration, and the court having considered the same and being fully advised in the premises; it is ordered that the judgment of the district court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellee herein do have and recover of and from the appellants herein and Samuel Hill; N. Levy; M. J. Hickey; Joseph Dougherty; A. J. Head; J. W. Wilson; William Munds; J. I. Gardner; W. T. Brown; H. H. Cartter; F. G. Brecht; R. N. Fredericks; Ed. W. Wells; T. W. Otis; Morris Goldwater; E. Block; Chas. A. Dake; Henry Brink-

meyer; Jake Marks; R. H. Burnister; Harry Brisley and J. N. McCandless, sureties on appeal bond, its costs in this court, taxed at — dollars, and its costs in the district court taxed at twenty-seven (\$27.00) dollars; together with all damages which the said appellee may sustain by the not levying the taxes directed by said judgment of the district court and certifying the same to the county treasurer of said Yavapai county, and the not doing the acts and things directed to be done by the said judgment; each of said sureties being bound in the sum set opposite his name: Samuel Hill \$1,000.00; N. Levy \$500.00; M. J. Hickey \$1,000.00; Joseph Dougherty \$1,000.00; A. J. Head \$1,000.00; J. W. Wilson \$1,000.00; William Munds \$1,000.00; J. I. Gardner \$1,000.00; W. T. Brown \$1,000.00; H. H. Carter \$1,000.00; F. G. Brecht \$1,000.00; R. N. Fredericks \$1,000.00; Ed. W. Wells \$1,000.00; T. W. Otis \$1,000.00; Morris Goldwater \$1,000.00; E. Block \$1,000.00; Chas. A. Dake \$1,000.00; Henry Brinkmeyer \$1,000.00; Jake Marks \$1,000.00; R. H. Burnister \$1,000.00; Harry Brisley \$1,000.00; J. N. McCandless \$500.00.

52 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants,	} January Term, 1900.
vs. THE TERRITORY OF ARIZONA, Appellee.	

Appeal from the district court, Yavapai county; R. E. Sloan, judge.

Reese M. Ling, district attorney of Yavapai county, attorney for appellant.

Charles F. Ainsworth, attorney general, attorney for appellee.

Opinion by Street, C. J.

The appellants constitute the board of supervisors of Yavapai county. The Territory, by Charles F. Ainsworth, its attorney general, on the second day of September, 1899, obtained from the district court an alternative writ of mandamus against the defendants, members of said board, requiring them to levy and assess upon the taxable property of the county of Yavapai the sum of thirty-two cents on each one hundred dollars of valuation for the years 1898 and 1899, and the sum of thirty-seven cents on each one hundred dollars of valuation for the year 1900, for the purpose of paying interest on two hundred and fifty-eight territorial funding bonds of the denomination of one thousand dollars each, issued by the territorial loan commission on the seventeenth day of September, 1897.

53 Upon the return of the writ and the filing of defendants' answer, a statement of facts was submitted; which statement of facts the court adopted as its findings; and as a result arising from the conclusions of law and the findings of fact judgment was

rendered for the plaintiff, and defendants were required to make such levy for the years 1898, 1899 and 1900. The defendants appeal and present to this court three questions for consideration:

"First. Were said bonds legally funded, without any demand from the board of supervisors of Yavapai county upon the territorial loan commission for such funding?"

"Second. Could said bonds be legally funded after January 1, 1897?"

"Third. Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such funding?"

The history of these bonds is fully set out in former decisions of this court; to wit:

Gage *vs.* McCord, governor, *et al.*, 51 Pac. Rep. 977;

Cocoonino County *vs.* Yavapai County, 52 Pac. Rep. 1127;

Yavapai County *vs.* McCord *et al.*, 59 Pac. Rep. 99.

The first and second questions presented for our view in this case were therein discussed and settled; as also in the case of *Bravin vs. The City of Tombstone*—another territorial funding bond case, reported in the 56 Pac. Rep. 719.

The district attorney for Yavapai county gracefully admitted the binding force of these decisions, but invited the court's attention again to the questions, because of the grave results embodied in their solution. The discussion of those questions in his brief is full and explicit, but a study of it does not enable this court to change its views upon the questions referred to. In those cases this court held that the bonds were valid; that they were regularly issued; that a demand from the holders of the bonds was sufficient, without a demand from the municipal authorities. We also held that the limit of January 1, 1897, mentioned in the act permitting the re-funding of bonds, was intended to be restrictive only of the indebtedness which could be funded, and made the act applicable to such obligations as existed and were outstanding prior to that time; but that it did not terminate on that day the authority of the territorial officers to fund said obligations.

The third question—"Were said bonds legally funded at a meeting of said board of loan commissioners of the Territory of Arizona, at a meeting at which only two members of said board were present, the third member being absent from the Territory and not in any manner consulted with reference to such funding," is answered by our statute (par. 2932, subdivision 2): "All words purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."

The case cited by appellant (*People vs. Coghill*, 47 Cal. 361), in which it was held that two members of the board of commissioners were not legally empowered to act, in the absence of the third, is

not in point; for it was the provision of that act that "the board of supervisors to whom the report shall be made, shall appoint three commissioners, who shall jointly view and assess upon each and every acre to be reclaimed or benefitted thereby," etc. There is no provision in the funding act of 1887, as amended by Congress in 1890, that the commissioners should jointly act, but the board was treated as a unit. The funding act is not strictly a congressional act; it is a territorial act, passed by the legislature of the Territory and embodied in the Revised Statutes of 1887. For the purpose of assuring the validity of the act, and of placing any issuance of bonds under it beyond dispute, the act was presented to Congress for its affirmative approval, which it gave with some few amendments, generally verbal in their nature and evidently for the purpose of making the act more specific. The title of the act passed by Congress clearly carries out that view, for the first provision of that act is, "that the act of the Revised Statutes of Arizona of 1887, known as title XXXI, 'funding,' be and is hereby amended so as to read as follows; and that as amended the same is hereby approved and confirmed, subject to future territorial legislation." The act being a territorial act, and the commission being the creation of the Territory, is directly affected by par. 2932, *supra*. The judgment of the district court is affirmed.

WEBSTER STREET, C. J.

We concur:

GEO. R. DAVIS, A. J.

FLETCHER M. DOAN, A. J.

(Endorsed:) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, *et al.*, appellants, *vs.* The Territory of Arizona, appellee. Opinion. Filed March 28, 1900. Thomas Grindell, clerk.

57 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Appellants,)

vs.

THE TERRITORY OF ARIZONA, Appellee.)

Now come the above-named appellants, George Schuerman, D. E. Dumas, and J. R. Beatson, and move the above-named court for a rehearing of the above-entitled cause, and show to said court:

That the name of the counsel of the appellee in said cause is Charles F. Ainsworth, attorney general of the Territory of Arizona, and that his place of residence is the city of Phoenix, in the county of Maricopa and Territory of Arizona.

That the grounds relied on for such rehearing are as follows:

1. That this court erred in holding and deciding that the bonds mentioned in the record and known as the P. & A. C. bonds, were legally funded without a demand for such funding by the board of supervisors of Yavapai county.

2. That the above-named court erred in holding and deciding that the said bonds were legally funded after January 1st, 1897.

3. That said court erred in holding and deciding that paragraph 2932, subd. 2, Rev. Statutes Arizona, 1887, applied to the loan commission of Arizona, and hence that two of said commission
 58 could legally act in the matter of funding said bonds, for the following reasons: That while the title of the act of Congress of June 25th, 1890, is as stated by this court in its opinion filed herein, yet a perusal of the body of the act shows that Congress instead of approving the Arizona funding act, itself passed a new act upon the same subject and by such act created a body to be known as the loan commission of Arizona. Whatever powers and duties the board of loan commissioners had, were derived from the act of Congress and not from any previous territorial legislation. The territorial law was necessarily superseded by the act of Congress which in itself covers the entire ground, and is the only authority for any action to be taken by the loan commission. Paragraph 2932 in terms applies only to "the statutes of this Territory," and hence could not apply to a body created by an act of Congress, even though the act of Congress related wholly to this Territory, and this court was in error in applying the provisions of par. 2932 to a body created by an act other than the "statute of this Territory."

The appellants further urge in support of the grounds of this motion the arguments and authorities contained in their brief on file in this cause.

Wherefore, appellants pray that this court grant a rehearing of this cause.

REESE M. LING,

Attorney for Appellants.

(Endorsed:) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, D. E. Dumas and J. R. Beatson, appellants, *vs.* The Territory of Arizona, appellee. Motion for a rehearing. Filed April 6th, 1900. Thomas Grindell, clerk.

59 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and	} Minute Entry, June 2nd, 1900. No. 709.
J. R. Beatson, Appellants,	
<i>vs.</i>	
TERRITORY OF ARIZONA, Appellee.	

In this cause it is ordered that the motion for rehearing filed herein by appellants, be and the same is hereby denied.

GEORGE SCHUERMAN, D. E. DUMAS, and	} Minute Entry, June 2nd, 1900.
J. R. Beatson, Appellants,	
<i>vs.</i>	
TERRITORY OF ARIZONA, Appellee.	

In this cause Mr. Reese M. Ling, attorney for appellants, in open court gave notice of appeal from the judgment of this court to the Supreme Court of the United States, and moved the court that it

fix the amount of the bond on appeal and that the remittitur herein be stayed for sixty days.

Whereupon, it was ordered by the court that the amount of the cost bond on appeal in this cause be fixed in the sum of one thousand dollars, and that the remittitur herein be stayed for sixty days.

60 In the Supreme Court of the Territory of Arizona

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Appellants,)

vs.

THE TERRITORY OF ARIZONA, Appellee.)

Statement of the Facts.

The above-entitled cause having been duly argued and submitted to this court at the January, 1900 term thereof, and the judgment appealed from having been on the 28th day of March, 1900 in all things affirmed by this court and a motion for a rehearing having been filed by the appellants and the same having been overruled, and the appellants desiring to prosecute an appeal to the Supreme Court of the United States from the judgment of this court in this case and having applied for a statement of the facts of the case in the nature of a special verdict pursuant to the act of Congress in such case made and provided :

Now therefore, this court does now on this 2nd day of June 1900, the same being a day of the January 1900 term of said court, in open court make and file the following statement of the facts of this case in the nature of a special verdict and statement of facts, to wit :

1. The appellants, George Schuerman, D. E. Dumas, and
61 J. R. Beatson, hereinafter called the defendants, are and were at the time of the commencement of this action the duly elected, qualified and acting supervisors of the county of Yavapai in the Territory of Arizona.

2. Prior to the 17th day of September, 1897, there existed certain bonds issued by said county of Yavapai, known as the P. & A. C. railroad bonds, upon which there was due, according to the terms of said bonds, at the date last mentioned the sum of \$260,218.80; said bonds had been issued and were outstanding about the year 1890 and long prior to the 1st day of January, 1897.

3. On the 18th day of November, 1896, the board of supervisors of said Yavapai county requested the board of loan commissioners to fund said bonds, and thereafter and on the 5th day of December, 1896, said board of supervisors duly rescinded their action requesting the funding of said bonds, a certified copy of the resolution of said board of supervisors rescinding said request being transmitted to and received by said board of loan commissioners prior to the 17th day of September, 1897.

4. After the 1st day of January, 1897, the said bonds were presented by the holders thereof to the said board of loan commissioners for funding and on the 17th day of September, 1897, the said board of loan commissioners (only two of its members being present as

hereinafter stated) met at the city of Phoenix and funded said
62 bonds issued by said Yavapai county at the request and demand of the holders of said bonds, by exchanging therefor
258 territorial funding bonds of said Territory, each of the denomination of \$1,000 and bearing interest at the rate of five per cent, per annum, interest payable semi-annually, on the 15th days of January and July of each year thereafter until paid; the said board of loan commissioners also paid out in cash the sum of \$2,218.80 for the purpose of funding said bonds.

5. At the meeting of said board of loan commissioners at which said bonds were funded, only two members of said board were present or acted; the third member of said board of loan commissioners was at the time of said meeting absent from the Territory of Arizona, and took no part in the funding of said bonds, and was not in any manner consulted with relation thereto.

6. On January 15th, 1898, there became due and payable as interest on the 258 territorial funding bonds issued in exchange for the bonds of said Yavapai county as aforesaid, the sum of \$4,288.33 according to the tenor of said territorial funding bonds, and thereafter on the 15th day of July and January of each year there became due and payable as interest on said territorial funding bonds, according to the tenor thereof, the sum of \$6,450.00, payable at the office of the territorial treasurer of the Territory of Arizona.

7. In compliance with the terms and conditions of said territorial funding bonds the territorial treasurer of said Territory of Arizona
63 has paid all the interest thereon at the times when the same became due and payable, amounting in all, at the date hereof, to the sum of \$23,638.33, and has taken up and cancelled interest coupons attached to said bonds to that amount.

8. For the year 1898 the territorial board of equalization of said Territory of Arizona, at its regular annual session for that year, levied the sum of thirty-nine cents on each one hundred dollars' valuation of the taxable property of said Yavapai county, for the purpose of paying the interest on the funded indebtedness of said Yavapai county, including the funding bonds hereinbefore mentioned, and the territorial auditor of said Territory duly certified the levy of said tax to the board of supervisors of said Yavapai county; that said board of supervisors failed and neglected to levy said tax of thirty-nine cents and include the same in the tax-roll for that year, but only levied the sum of seven cents on each hundred dollars of valuation of said county for the purpose of paying the interest on the funded indebtedness of said county; that said sum of seven cents on the hundred dollars was sufficient to pay the interest on the funded indebtedness of said county other than the said funding bonds issued in lieu of said P. & A. C. railroad bonds, but was not sufficient to pay any part of the interest on said last-mentioned territorial funding bonds.

9. Save as aforesaid, no demand was ever made by the board of supervisors of said Yavapai county for the funding of said P. & A. C. railroad bonds, and no notice was ever given to said
64 board of supervisors at or about the time of the funding that said bonds had been funded.

10. For the year 1899 the territorial board of equalization of said Territory at its annual session for that year, levied the sum of thirty-seven cents on each one hundred dollars of valuation of the taxable property in said Yavapai county, for the purpose of paying interest on the funded indebtedness of said county of Yavapai, including the interest on the territorial funding bonds aforesaid, maturing in the year 1900, and the territorial auditor duly certified the levy of said tax to the board of supervisors of said Yavapai county; that the defendants, comprising the board of supervisors of said county, failed and neglected to levy said tax of thirty-seven cents on the hundred dollars for the purpose of paying interest on the funded indebtedness of said county; said sum of six cents on the hundred dollars was sufficient to pay the interest on all the funded indebtedness of said county other than the territorial funding bonds issued in lieu of said P. & A. C. railroad bonds as aforesaid, but was insufficient to pay the interest on said territorial funding bonds or any part thereof.

11. The above-mentioned P. & A. C. railroad bonds were originally issued by the county of Yavapai in aid of the construction of the Prescott & Arizona Central railroad, a line of railway running from Prescott Junction or Seligman to Prescott, Arizona, and were granted and issued as a subsidy to the corporation building
65 and owning said railroad.

12. That prior to the institution of this suit demand was made by the territorial auditor, representing the Territory of Arizona, of the board of supervisors of Yavapai county to levy the tax assessment as set forth in the complaint, and said board of supervisors, the defendants herein, declined and refused to make said levy.

13. That said sum of thirty-nine cents on each hundred dollars of valuation of said county of Yavapai for the year 1898 was necessary to be levied in order to pay the amount of interest due on said bonds for said year, and that the said sum of thirty-seven cents on each one hundred dollars of valuation of said county was necessary to be levied in order to pay the interest due on said bonds for the year 1899.

14. That the amount in dispute in this action exclusive of interest and costs is the sum of \$23,638.38.

Done in open court this 2nd day of June, 1900.

By the court.

WEBSTER STREET,

Chief Justice of the Supreme Court of the Territory of Arizona.

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, *et al.* vs. Territory of Arizona. Statement of facts. Filed June 2, 1900. Thomas Grindell, clerk.

66 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON,	} No. 709.
Appellant,	
<i>vs.</i>	
THE TERRITORY OF ARIZONA,	Appellee.

The above-named appellants respectfully represent that there is manifest error committed to their injury by the final judgment of the supreme court of the Territory of Arizona, rendered on the 28th day of March, 1900, in the above-entitled cause, in which the judgment of the district court of the fourth judicial district of the Territory of Arizona, in and for the county of Yavapai, was affirmed, and which said judgment was rendered against appellant.

Wherefore, said appellants, conceiving themselves to be aggrieved, by said judgment of the supreme court of Arizona, hereby appeal from said judgment to the Supreme Court of the United States and pray that said appeal may be allowed, and that a transcript of the record, proceedings, judgment, decisions, and opinion, in this cause and a statement of the facts in said cause, as found by this court, be duly authenticated, and sent to the Supreme Court of the United States.

REESE M. LING,
Attorney for Appellants.

67 And now, to wit, on the second day of June, 1900, the appeal prayed for, in the foregoing petition, is hereby allowed, with citation to issue on the filing of a bond in the penal sum of one thousand dollars, with two or more good sureties, to be approved by this court; and all proceedings under said judgment shall be stayed upon the filing of a supersedeas bond, in the sum of seventy-five hundred dollars, to be approved by this court or chief justice thereof, all proceedings shall be stayed for a period of sixty days from the date hereof, during which said time, said bond shall be filed.

WEBSTER STREET,

Chief Justice of the Supreme Court of the Territory of Arizona.

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. George Schuerman, *et al. vs.* Territory of Arizona. Petition for, and allowance of, appeal. Filed June 2, 1900. Thomas Grindell, clerk.

68 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON,	} No. 709.
Appellants,	
<i>vs.</i>	
THE TERRITORY OF ARIZONA,	Appellee.

The above-named appellants respectfully represents that there is manifest error committed to their injury by the final judgment of the supreme court of the Territory of Arizona, rendered on the 28th day of March 1900, in the above-entitled cause in which the judgment of the district court of the fourth judicial district of the Terri-

tory of Arizona in and for the county of Yavapai, was affirmed, and which said judgment was rendered against the said appellants.

Wherefore, said appellants, conceiving themselves to be aggrieved by said judgment of the supreme court of the Territory of Arizona, hereby appeal from said judgment to the Supreme Court of the United States and pray that said appeal may be allowed, and that a transcript of the record, proceedings, judgment, decisions and opinion in this cause and a statement of the facts in said cause, as found by this court, be duly authenticated and sent to the Supreme Court of the United States.

REESE M. LING,
Attorney for Appellants.

69 And now, to wit, on the 24th day of July, 1900, the appeal prayed for in the foregoing petition is hereby allowed, with citation to issue upon the filing of a bond in the sum of one thousand dollars, with two or more good sureties to be approved by the chief justice of this court, and all proceedings under said judgment shall be stayed upon the filing of a supersedeas bond in the sum of seven thousand five hundred dollars, to be approved by this court or the chief justice thereof.

WEBSTER STREET,
*Chief Justice of the Supreme Court of the
Territory of Arizona.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman, *et al.*, vs. Territory of Arizona. Petition for and allowance of appeal. Filed July 24th, 1900. Thomas Grindell, clerk. By Angie B. Parker, deputy.

70 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, Appel-
lants,
vs.
THE TERRITORY OF ARIZONA, Defendants. }

Know all men by these presents, that we, George Schuerman, D. E. Dumas and J. R. Beatson, as principals, and Morris Goldwater, T. W. Otis; W. H. Smith; Henry Brinkmeyer; Ed. W. Wells; W. T. Brown; A. J. Head; E. Block and J. W. Wilson; J. I. Gardner, as sureties, are held and firmly bound unto the Territory of Arizona, in the full and just sum of eight thousand five hundred dollars, to be paid to the said Territory of Arizona, its certain attorney, successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this 23rd day of July in the year of our Lord one thousand nine hundred.

Whereas, lately at a session of the supreme court of the Territory of Arizona, in a suit depending in said court between George Schuer-

man, D. E. Dumas and J. R. Beatson, appellants, and The Territory of Arizona, appellee, a final judgment was rendered against the said George Schuerman, D. E. Dumas and J. R. Beatson, appellants, and the said George Schuerman, D. E. Dumas and J. R. Beatson, 71 appellants, having obtained an allowance of appeal and filed a copy thereof in the office of the clerk of said supreme court of the Territory of Arizona to reverse the said judgment in the aforesaid suit, and a citation directed to the said Territory of Arizona, appellee, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington, on the 22nd day of Septemebr, 1900;

Now the condition of the above obligation is such, that if the said George Schuerman, D. E. Dumas and J. R. Beatson, appellants shall prosecute said allowance of appeal to effect, and answer all costs and damages, if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

G. H. SCHUERMAN. [SEAL.]

D. E. DUMAS. [SEAL.]

J. R. BEATSON. [SEAL.]

MORRIS GOLDWATER. [SEAL.]

One thousand dollars.

T. W. OTIS. [SEAL.]

W. H. SMITH. [SEAL.]

HENRY BRINKMEYER. [SEAL.]

ED. W. WELLS. [SEAL.]

W. T. BROWN. [SEAL.]

One thousand dollars.

A. J. HEAD. [SEAL.]

E. BLOCK. [SEAL.]

J. W. WILSON. [SEAL.]

J. I. GARDNER. [SEAL.]

Scaled and delivered in presence of—

REESE M. LING.

SAMUEL L. PATTEE.

Approved by—

WEBSTER STREET,

*Chief Justice of the Supreme Court
of the Territory of Arizona.*

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman, *et al.* vs. Territory of Arizona. Bond on appeal. Filed July 24th, 1900. Thomas Grindell, clerk. By Angie B. Parker, deputy.

72 In the Supreme Court of the Territory of Arizona.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. Beatson, Appellants, <i>vs.</i>	} Assignment of Errors.
THE TERRITORY OF ARIZONA, Appellee.	

And now comes the said appellants, George Schuerman, D. E. Dumas and J. R. Beatson, by Reese M. Ling, their attorney, and say that in the record and proceedings in the above-entitled cause in the supreme court of the Territory of Arizona, there is manifest error in this, to wit:

1st. The said supreme court of the Territory of Arizona erred in affirming the judgment of the district court and in holding that said district court did not err in overruling the general demurrer of defendants to the complaint of the plaintiff.

2nd. The said supreme court erred in affirming the judgment of the district court and in holding that said district court did not err in overruling the special demurrer of defendants to the plaintiff's complaint.

3rd. The said supreme court erred in affirming the judgment of the district court and in holding that said district court did not err in finding as a conclusion of law that those certain two hundred fifty-eight railroad subsidy bonds issued by the county of Yavapai

73 in aid of the construction of the railroad known as the Prescott & Arizona Central railroad, extending from Seligman, Arizona, to Prescott, Arizona, were on the 17th day of September, 1897, valid subsisting obligations of the county of Yavapai.

4th. The said supreme court erred in affirming the judgment of the said district court and in holding that said district court did not err in finding as a conclusion of law that the action of the loan commission of the Territory of Arizona in funding said obligations and in issuing territorial funding bonds in lieu thereof was in all respects regular and valid.

5th. The said supreme court erred in affirming the judgment of the said district court and in holding that said district court did not err in finding as a conclusion of law that said bonds so funded by said loan commission of the Territory of Arizona are valid and legal obligations of the county of Yavapai, and the county of Yavapai is liable for the same and for all the interest accruing on said bonds.

6th. The said supreme court erred in affirming the judgment of the said district court and in holding that said district court did not err in finding as a conclusion of law that the defendants herein are legally bound to levy and assess the sums of 32 cents on each one hundred dollars and 37 cents on each one hundred dollars of valuation of all the taxable property in said Yavapai county.

7th. The said supreme court erred in affirming the judgment of said district court and in holding that said district court did

74 not err in rendering judgment in favor of the plaintiff upon the agreed statement of facts, adopted as the findings of fact.

8th. The said supreme court erred in holding and deciding that no demand for the funding of said bonds by the board of supervisors of Yavapai county was necessary in order that the same might be legally funded under the provisions of the act of Congress approved June 6th, 1896, and in affirming a like ruling and decision by the said district court.

9th. The said supreme court erred in holding and deciding that the bonds mentioned in the complaint in this action and known as the P. & A. C. Railroad bonds, were legally funded after January 1st, 1897, under the provisions of the act of Congress approved June 6th, 1896, and in affirming the judgment of said district court, based upon a like ruling and decision.

10th. The said supreme court erred in holding and deciding that the said P. & A. C. Railroad bonds, mentioned in the said complaint, were legally funded at the meeting of the board of loan commissioners of the Territory of Arizona on September 17th, 1897, at which only two members of said board were present, the third member of said board not being present or acting and not being in any manner consulted with reference to said funding, and in affirming the judgment of said district court based upon a like ruling and decision.

11th. Upon the facts found by the said supreme court and contained in its statement of facts in the nature of a special verdict, the said supreme court erred in affirming the judgment of the said district court, and in finding as a conclusion of law from said facts that the judgment of said district court was not erroneous.

12th. The said supreme court erred in affirming the judgment of said district court and in rendering judgment against said appellants upon the facts found by the said district court, and by the said supreme court, and by the law of the land the said judgment ought to have been given for the said appellants against the said appellee.

And the said appellants pray that the judgment aforesaid rendered by the said supreme court of the Territory of Arizona, may be reversed, annulled and altogether held for naught, and that they may be restored to all things which they have lost by occasion of the said judgment.

REESE M. LING,

Attorney for Appellants.

(Endorsed :) No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman, *et al.* vs. Territory of Ariz. Assignment of errors. Filed July 24th, 1900. Thomas Grindell, clerk. By Angie B. Parker, deputy.

Clerk's Certificate.

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UNITED STATES OF AMERICA, }
Territory of Arizona, } ss :

I, Thomas Grindell, clerk of the supreme court of the Territory of Arizona, by virtue of the foregoing appeal, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 75, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of George Schuerman, D. E. Dumas and J. R. Beatson, appellants, against The Territory of Arizona, appellee, as the same remain of record and on file in said office.

Also that the citation attached hereunto, is the original citation issued by said supreme court of the Territory of Arizona.

In testimony whereof, I have caused the seal of the said supreme court of the Territory of Arizona to be hereunto affixed at the city of Phoenix, in the Territory of Arizona, this 25th day of July, 1900.

[Seal Supreme Court of Arizona.]

THOMAS GRINDELL,
Clerk of the Supreme Court of the Territory of Arizona,
 By ANGIE B. PARKER,
Deputy Clerk.

77 In the Supreme Court of the United States.

GEORGE SCHUERMAN, D. E. DUMAS, and J. R. BEATSON, }
 Appellants, }
 vs. } Citation.
 THE TERRITORY OF ARIZONA, Appellee. }

UNITED STATES OF AMERICA, ss :

The President of the United States to the Territory of Arizona,
 Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 22nd day of September 1900, pursuant to an appeal filed in the clerk's office of the supreme court of the Territory of Arizona, wherein George Schuerman, D. E. Dumas and J. R. Beatson are appellants, and you are respondent, to show cause, if any there be, why the judgment rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 24th day of July in the year of our Lord one thousand nine hundred.

WEBSTER STREET,
*Chief Justice of the Supreme Court
 of the Territory of Arizona.*

78 TERRITORY OF ARIZONA, } ss:
County of Maricopa,

On this 24th day of July in the year of our Lord one thousand nine hundred, personally appeared Reese M. Ling before me, the subscriber, Angie B. Parker, and makes oath that he delivered a true copy of the within citation to Charles H. Akers, acting governor of the Territory of Arizona, and to Charles F. Ainsworth, attorney general of the Territory of Arizona, at Phoenix, Arizona, on the 24th day of July 1900.

REESE M. LING,

Sworn to and subscribed before me this 24th day of July 1900.

[Seal Supreme Court of Arizona.]

ANGIE B. PARKER,
Deputy Clerk Supreme Court of Arizona Territory.

79 [Endorsed:] No. 709. In the supreme court of the Territory of Arizona. Geo. Schuerman *et al.* vs. Territory of Ariz. Citation. Filed July 24th 1900. Thomas Grindell clerk. By Angie B. Parker deputy.

Endorsed on cover: File No. 17,894. Arizona Territory supreme court. Term No. 151. George Schuerman, D. E. Dumas, and J. R. Beatson, appellants, vs. The Territory of Arizona. Filed September 1, 1900.